

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

DREWES FARMS PARTNERSHIP,)	Case No. 3:19-cv-00434-JZ
)	
Plaintiff,)	Hon. Jack Zouhary
)	
v.)	
)	
CITY OF TOLEDO, OHIO,)	
)	
Defendant.)	

**DEFENDANT CITY OF TOLEDO'S MOTION FOR LEAVE TO FILE
COMBINED REPLY IN SUPPORT OF ITS CROSS-MOTION UNDER
RULE 12(c) FOR JUDGMENT ON THE PLEADINGS AS TO DREWES
FARMS PARTNERSHIP (DOC. #47) AND REPLY IN SUPPORT OF
ITS CROSS-MOTION UNDER CIVIL RULE 12(c) AS TO THE
STATE OF OHIO (DOC. #48)**

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Defendant, City of Toledo (“City”), respectfully requests that the Court grant it leave to file a combined: (1) Reply Memorandum in Support of the City’s Cross-Motion under Rule 12(c) for Judgment on the Pleadings as to Plaintiff, Drewes Farms Partnership (“DFP”) (Doc. #47) (“Reply to DFP”); and (2) Reply Memorandum in Support of the City’s Cross-Motion under Civil Rule 12(c) as to the State of Ohio (Doc. #48) (“Reply to the State”). The City requests that the Court set a due date for its combined Reply to DFP and Reply to the State of September 6, 2019.

Although Local Rule 7.1 generally provides for the filing of a reply brief in support of a Rule 12(c) motion, the City submits this Motion for Leave in recognition of the Judge’s standing orders and to clarify the briefing schedule. In doing so, the City notes that the Court’s July 18, 2019 “Order re: Discovery Hearing” (Doc. #45) did not at that time contemplate a filing deadline for the City’s Reply to DFP or Reply to the State, as the City’s August 9th responses to DFP and the State’s 12(c) motions included the City’s respective cross-motions.

The City further submits this Motion for Leave in response to DFP’s recent assertions in its Combined Reply in Support of Its Motion for Judgment on the Pleadings, and Opposition to Defendant’s Cross-Motion for Judgment on the Pleadings (“DFP’s Combined Reply”) (Doc. #53), that the City filed a cross-motion without leave, and that briefing should be considered closed as to DFP. But, the City’s Rule 12(c) Cross-Motions as to DFP and the State contain arguments regarding standing and other issues which respond to DFP’s and the State’s Rule 12(c) Motions, and which were already before the Court as a result of DFP’s and the State’s Rule 12(c) Motions and the City’s defenses to those Motions.

All parties were aware of the City's position and defenses, including its standing defense, before the City filed its responsive Cross-Motions; the parties had already conferred about their respective positions and legal authorities related to standing; and obtained the Court's involvement in a discovery dispute on the standing issue. The City's Cross-Motions did not raise issues outside the scope of its already-existing responses and defenses to DFP's and the State's Rule 12(c) Motions; rather, the City's Cross-Motions merely provide the Court with an avenue to fully dispose of the case through this round of motion practice on the standing and other grounds argued in the City's briefs.

In seeking leave to file a combined reply responding to DFP's and the State's recent opposition and reply briefs (Doc. ##52, 53), the City states that a combined reply is practical and appropriate because some overlap exists in the arguments DFP and the State make in the two briefs; because some contradictions exist between DFP's and the State's arguments which the City should be able to identify and explain to the Court; and because the State's brief contains arguments supporting the City's entitlement to judgment on the pleadings on DFP's Complaint for lack of standing. Further, the City's initial review of the State's Opposition to the City's Rule 12(c) Cross Motion (Doc. #52) indicates the State has cited over a dozen cases which were not cited in the State's Rule 12(c) Motion or the City's Rule 12(c) Cross-Motion as to the State. DFP's Combined Reply similarly appears to cite over 15 cases which were not cited in DFP's Rule 12(c) Motion or the City's Rule 12(c) Cross-Motion as to DFP. The City should be provided the opportunity to review, analyze, and reply to these many newly-cited cases and the other parties' assertions related thereto.

The City's requested deadline for this combined memorandum of September 6, 2019 seeks a brief four-day extension from the 14-day period for reply memoranda provided in Local Rule 7.1(e). The City seeks this brief additional time due to counsel's personal and business schedules during the weeks of August 20, 2019 and August 26, 2019, which includes Attorney Sarah Skow's being out of the office for the entire week of August 26, 2019.

The City does not submit this Motion for Leave for purposes of delay, and granting leave will not prejudice any party. Rather, it will permit the City to respond to new arguments and case law, explain contradictions between DFP's and the State's briefs, explain how the State's brief supporting the City's arguments that DFP lacks standing, and otherwise respond to DFP's and the State's oppositions to the City's Rule 12(c) Cross-Motions.

Respectfully submitted,

/s/ Sarah K. Skow

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been electronically filed this 22nd day of August, 2019. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

/s/ Sarah K. Skow

Sarah K. Skow

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